

AGREEMENT

Following is the agreement between the Department of Human Services (DHS), formerly Department of Social Services (DSS), and the Department of Community Health (DCH), formerly Department of Mental Health (DMH):

An Agreement Between the Department Of Social Services
and the Department Of Mental Health
On Adult Protective Services Investigations
As Required Under 1982 P.A. 519 and 1974 P.A. 258

A. Introduction

Adults receiving mental health services in or through state funded facilities which are operated by the Department of Mental Health (DMH) or residential homes and facilities under contract with DMH are assured protection from abuse and neglect under the Mental Health Code. The Department of Social Services (DSS) is also mandated by Public Act 519 (1982) to provide protective services to vulnerable adults as determined necessary after investigation of reports of abuse, neglect, exploitation or endangerment. Recognizing the need to avoid duplication of services to those adults in facilities operated by DMH, Public Act 519 precludes DSS from investigations in these facilities and permits agreements concerning investigations in residential homes and facilities under contract with DMH.

B. Definitions

1. "Abuse" means harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes nonaccidental physical or mental injury, sexual abuse, or maltreatment.
2. "Adult in need of protective services" or "adult" means a vulnerable person not less than 18 years of age who is suspected of being abused, neglected, exploited, or endangered.
3. "Endangered" or "endangerment" means a life threatening situation caused by the inability of the person whose life is threatened to respond.
4. "Exploitation" means an action which involves the misuse of an adult's funds, property, or personal dignity by another person.
5. "Neglect" means harm to an adult's health or welfare caused by the conduct of a person responsible for the adult's health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care.
6. "Vulnerable" means a condition in which an adult is unable to protect himself or herself from abuse, neglect, exploitation, or endangerment because of a mental or physical impairment or because of the frailties or dependencies brought about by advanced age.

C. Purpose

To enter into an agreement between DSS and DMH concerning each department's statutory role in the investigation of alleged or suspected abuse, neglect, exploitation or the endangerment of adult residents of state funded and DMH operated facilities and of adult residents of

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residential homes and facilities under contract with DMH in order to avoid duplication of effort. This agreement revokes and cancels all previous agreements relative to the investigation of such complaints regarding adult residents in state funded and DMH operated facilities or in residential homes and facilities under contract with DMH.

D. Legal Basis

Act No. 519, Public Acts of 1982, being MCL 400.11 through 400.11f.
Act No. 258, Public Acts of 1974, being MCL 330.1001 et. seq.

E. Statutory Requirements

1. In keeping with 1982, P.A. 519, Section 11f(1) that DSS "shall not take any action pursuant to Sections 11 to 11e in the case of a person who is residing in a state funded and operated facility or institution, including but not limited to a correctional institution, mental hospital, psychiatric hospital, psychiatric unit, or a developmental disability regional center."
2. To implement 1982, P.A. 519, Section 11f(3) which permits DSS to enter into "interdepartmental agreements to carry out the duties and responsibilities of the state department under Sections 11 to 11e in state funded and operated facilities and institutions, or to coordinate investigation in state licensed facilities under contract with a state agency in order to avoid duplication of effort among state agencies having statutory responsibility to investigate."
3. To assure compliance with 1982, P.A. 519, Sections 11 to 11e, which establish the requirements for the investigation of reports of suspected adult abuse, neglect, exploitation or endangerment, i.e.,
 - a. to commence an investigation within 24 hours if there is a reasonable belief the person suspected to be at risk is an adult in need of protective services,
 - b. to conduct the investigation so as to include the following:
 - 1) determination of the nature, cause and extent of harm,
 - 2) examination of evidence,
 - 3) identification, if possible, of the perpetrator,
 - 4) names, conditions of other adults in the residence,
 - 5) evaluation of persons responsible for care of the adult,
 - 6) environment of the residence,
 - 7) relationship of the adult to the person responsible for care,
 - 8) evaluation of adult's willingness to receive protective services.
 - c. to conduct a personal interview with the adult,
 - d. to determine if the adult is or was actually abused, neglected, exploited or endangered.

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- e. to make available to the adult the appropriate and least restrictive protective services and take necessary action to safeguard and enhance the welfare of the adult, if possible,
 - f. to prepare a written report on the investigation's findings,
 - g. to correct any inaccurate report and to identify any unsubstantiated statements in reports,
 - h. to provide an adult foster care licensee in whose licensed AFC facility an investigation is taking place, with the substance of the allegations as soon as practicable after the beginning of the investigation.
4. In keeping with 1982, P.A. 519, Section 11c(1) "the identity of a person making a report shall be confidential and subject only to disclosure with the consent of that person or by judicial process." Also to assure that any person reporting in good faith or assisting in the investigation "... shall be immune from civil liability...." Furthermore, as in (2), "any legally recognized privileged communication, except that between attorney and client..." and that accorded a physician using professional judgment in the best interest of the patient, "...is abrogated...." and cannot be used to excuse a report as required by this act.
5. In accord with 1982 P.A. 519, Section 11b(6) which requires DSS to "collaborate with....appropriate state and community agencies providing human services"....and Administrative Rule 400.6(25) which permits the sharing of client information with other agencies when this is related to the administration of the adult protective services program and to assist in services provision, provided that:
- a. the confidential nature of the information is preserved;
 - b. the information is used only for the purpose for which it was released; and
 - c. assurance is given steps will be taken to safeguard the information.
6. In compliance with 1974, P.A. 258, Section 330.1722(1) "A recipient of mental health services shall not be physically, sexually, or otherwise abused." And (2) "The governing body of each facility shall....protect recipients....from abuse..., shall provide a mechanism.....for reviewing all charges of abuse, (and) shall ensure that.....disciplinary action is taken...."
7. In keeping with 1974, P.A. 258, Section 330.1748(6), "Information may be shared in the discretion of the holder of the record: (c) To providers of mental or other health services or a public agency when there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other persons."

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F. Mental Health Residential Homes, Facilities and Programs Covered by This Agreement

1. DMH Funded and Operated Facilities (see attached list)
 - a. Regional Psychiatric Hospitals and Special Facilities
 - b. Regional Centers for Developmental Disabilities
2. Residential Homes and Facilities under contract with DMH
 - a. Specialized Residential Facilities/DD Homes
 - b. Specialized Residential Facilities/MI Homes
 - c. Semi-Independent Settings
3. Other Mental Health Residential Homes, Facilities and Programs
 - a. Private Psychiatric Hospitals and Units
 - b. Public Psychiatric Hospitals and Units not operated by DMH
 - c. Residential Homes, Facilities or Programs operated by or under contract with CMH.

G. Responsibility to Report Suspected Abuse, Neglect, Exploitation, Endangerment of Adult Residents

1. DMH Funded and Operated Facilities
 - a. Each employee of a facility which is DMH funded and operated who has knowledge of, suspects or has reasonable cause to believe an adult resident of the facility has been abused, neglected, exploited or is endangered shall make an oral report immediately to the appropriate local DSS office to assure compliance with the mandatory reporting requirement of 1982 P.A. 519(Section 11a(1)). The local DSS office shall document receipt of the report but shall not take further action in keeping with the provisions of 1982 P.A. 519, (Section 11f(1)).
 - b. Each employee shall also report, as noted above in (a), on a DMH Incident Report Form (DMH-2550) according to the established policy and procedures of the facility.

Exception: An employee who wishes his/her identity to remain confidential, subject only to disclosure with consent or by court order, shall state this when making the oral report to DSS. The local DSS office staff person who receives such a confidential report shall forward the report immediately to the appropriate DMH facility Rights Advisor, keeping the identity of the complainant confidential.

- c. The local DSS office staff person who receives a report about an adult resident of a DMH facility, from a source other than a DMH employee of a facility noted in F-1, shall report immediately to the appropriate DMH facility Rights Advisor.

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2. Residential Homes and Facilities under contract with DMH

- a. Each employee of a residential home or facility which is under contract with DMH who has knowledge of, suspects or has reasonable cause to believe an adult resident of the facility has been abused, neglected, exploited or is endangered, shall make an oral report immediately to the appropriate local DSS office to assure compliance with the mandatory reporting requirement of 1982 P.A. 519 (Section 11a(1)).
- b. Each employee shall also report, as noted above in (a), on a DMH Incident Report Form (DMH-2550) according to the established policy and procedures of the home or facility.

Exception: An employee who wishes his/her identity to remain confidential, subject only to disclosure with consent or by court order, shall state this when making the oral report to DSS. The local DSS office staff person who receives such a confidential report shall use the procedures noted in H-2, keeping the identity of the complainant confidential.

- c. The local DSS staff person who receives a report about an adult resident of a specialized residential home or facility under contract with DMH (F-2 a,b) which is also licensed under the Adult Foster Care Act, shall notify immediately the appropriate DSS Adult Foster Care Licensing Consultant to assure a licensing investigation in accordance with the provisions of 1979 P.A. 218.

3. Other Mental Health Residential Homes, Facilities and Programs

- a. Each employee of any other mental health residential home, facility and program who has knowledge of, suspects or has reasonable cause to believe an adult in a home, facility or program has been abused, neglected, exploited or is endangered, shall report immediately to the local DSS office in the county in which the home, facility or program is located.
- b. The local DSS staff person who receives a report about an adult resident of a residential home or facility operated by or under contract with CMH (F-3c) which is also licensed under the Adult Foster Care Act, shall notify immediately the appropriate DSS Adult Foster Care Licensing Consultant to assure a licensing investigation in accordance with the provisions of 1979 P.A. 218.

H. Responsibility to Investigate Reports of Suspected Abuse, Neglect, Exploitation, Endangerment of Adult Residents, and to Submit Written Reports1. DMH Funded and Operated Facilities

- a. The DMH Office of Recipient Rights shall have responsibility for the investigation of reports of suspected abuse, neglect, exploitation or endangerment of any adult resident in DMH funded and operated facilities.

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- b. The DMH Rights Advisor shall assure that a copy of the Recipient Rights Report Form (DMH-2501), both incomplete and final, on any rights case which was reported to the DMH Rights Advisor by a local DSS office, is sent to the appropriate local DSS office when it is filed. The local DSS office shall also be informed by the Rights Advisor when such a rights case which substantiates a violation of rights is referred to a DMH bureau director or to the DMH Director for remedial action and when such action is completed.
 - c. The local DSS office of the county in which the alleged incident occurs shall be responsible to investigate reports of suspected abuse, neglect, exploitation, or endangerment of an adult resident of a DMH funded and operated facility whenever such an incident occurred prior to admission to the facility or occurs while the resident is on leave of absence from the facility.
 - d. The local DSS office APS Complaint Coordinator shall assure that a written report of the investigation of any substantiated incident involving an adult resident prior to admission to the facility or while she/he is on leave of absence is sent to the appropriate DMH facility Rights Advisor.
2. Residential Homes and Facilities under contract with DMH
- a. The local DSS office receiving a report of suspected abuse, neglect, exploitation, or endangerment of an adult resident of a residential home or facility under contract with DMH shall document receipt of the report and immediately delegate responsibility to investigate the report to the appropriate DMH Rights Advisor, keeping the identity of the complainant confidential, if compliance with P.A. 519 requirements is assured. (See Section E-3 of this Agreement, Statutory Requirements.)
 - b. The DMH Rights Advisor shall assure that a copy of the Recipient Rights Report Form (DMH-2501), both incomplete and final, on any rights case which was delegated to the DMH Rights Advisor for an investigation, is sent to the appropriate local DSS office when it is filed. The local DSS office shall also be informed when such a rights case which substantiates a violation of rights is referred to a DMH bureau director or to the DMH Director for remedial action, and when such action is completed.
 - c. The local DSS office APS Complaint Coordinator shall review the report of the DMH Recipient Rights investigation and any subsequent remedial action to assure compliance with the requirements of P.A. 519.
 - d. If the local DSS office has reason to believe that compliance with P.A. 519 cannot be assured before the investigation or upon receiving the DMH Recipient Rights report, it shall conduct an investigation and also initiate the procedures noted in Section I-3 of this Agreement to resolve any compliance problems.

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3. Other Mental Health Residential Homes, Facilities and Programs

- a. The local DSS office of the county in which the incident occurs shall have responsibility for the investigation of reports of suspected abuse, neglect, exploitation or endangerment of an adult in a residential home, facility or program noted in F-3.
- b. The local DSS office APS Complaint Coordinator shall assure that a written report on the outcome of the investigation of any report of abuse, neglect, exploitation or endangerment is sent to one or more of the following, as appropriate:
 - (1) Facility Director of private psychiatric hospital/unit/ or public psychiatric hospital/unit not operated by DMH;
 - (2) DMH Licensing and Accreditation Division, when facility is licensed by DMH;
 - (3) DSS Adult Foster Care Licensing Consultant when residential home/facility is licensed under 1979 P.A. 218;
 - (4) CMH Agency Director, when residential home/facility/ program is operated by or under contract with CMH;
 - (5) CMH Officer of Recipient Rights, when residential home/facility/program is operated by or under contract with CMH;
 - (6) DMH Office of Recipient Rights, in all cases.

I. Administration

1. In accordance with the statutory requirements of P.A. 519 and P.A. 258 and to fulfill each agency's responsibility to investigate and provide protective services to vulnerable adults, case records and other information pertinent to the investigation may be mutually shared provided confidentiality requirements are maintained when applicable.
2. DMH shall provide to DSS a list of all residential homes and facilities under contract with DMH and a list of all licensed private psychiatric hospitals and units by county of location with address, telephone number and facility director noted, within sixty days of the effective date of this Agreement and on a quarterly basis thereafter.
3. Resolution of any problems regarding the implementation of this Agreement shall first be attempted between the field organizations involved. If no solution acceptable to both parties is possible at the field level, the matter shall be referred to either the DMH Office of Recipient Rights or the DSS Office of Adult and Family Community Services, Adult Protective Services, as appropriate.
4. This Agreement shall be effective upon signature of the Directors of DSS and DMH. It may be reviewed for the purpose of revision at the request of either DSS or DMH at any time, but shall be reviewed at least annually.

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Agnes M. Mansour
Director: signature
Michigan Department of
Social Services

12/29/83

Date

C. Paul Behn
Director: signature
Michigan Department of
Mental Health

1/17/84

Date